

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JONATHAN BARAHONA and HECTOR
HERNANDEZ,

Plaintiffs,

v.

PARADISE TREE SERVICE & LANDSCAPE
CORP. and WILLIAM NIETO,

Defendants.

Case No. 21-cv-05400 (GRB)(LGD)

AFFIRMATION IN SUPPORT
OF THE DEFENDANTS'
MOTION FOR A NEW TRIAL
AND OTHER RELIEF

GLENN J. INGOGLIA (GI 1655), an attorney duly licensed to practice law in the Eastern and Southern Districts of New York and the Courts of the State of New York, do hereby swear the following statements are true and correct under the penalty of perjury:

1. I have recently been retained on May 30, 2025, to represent the Defendants in this matter.
2. I used to represent the Defendants in this matter until February 8, 2024, when I was relieved due to my client was unable to afford my services, any longer. I represented the defendants since October or November 2021 through February 8, 2021.
3. Attached hereto is a memorandum of law, exhibits and affidavit of the Defendant, William Nieto, in support of the within Motion for a New Trial and Other Relief.
4. The Defendants, PARADISE TREE SERVICE & LANDSCAPE CORP. and WILLIAM NIETO, pursuant to Federal Rule of Civil Procedure (FRCP) Rule 59, and more specifically, FRCP RULE 59(a)(1)(B), the Defendants respectfully request the Court grant a partial new trial of the Plaintiffs' Second Cause of Action in which the trial court found the

Defendants liable to the Plaintiffs for unpaid overtime under the New York State Labor Law (NYLL) and awarded the Plaintiffs damages as against the Defendants. The Defendants seek a new trial of this cause of action in its entirety, as well as the setting aside of the judgment, order or verdict regarding this cause of action and damage award.

5. The Defendants respectfully request that if they should be granted a new partial trial, then pursuant to U.S. CONST. AMEND. VII, FRCP RULE 38, FRCP RULE 39, and FRCP RULE 59, the trial is by jury, or if not, then Defendants are granted a new partial bench trial.

6. The Defendants seek additional relief pursuant to FRCP RULE 59. More specifically, pursuant to FRCP RULE 59(a)(2), the Defendants respectfully request the Court to open the judgment after trial, take additional testimony, amend the findings of fact and conclusions of law or make new ones and direct the entry of a new judgment.

7. In addition, and pursuant to FRCP RULE 59(e), the Defendants respectfully request the Court to alter or amend the judgment resulting from the verdict.

8. Pursuant to FRCP RULE 52 and specifically FRCP RULE 52(a) and (b), the Defendants respectfully request the Court to Set Aside, Add and/or Amend the Court's findings and Vacate or Amend the Judgment which resulted or will result from the decision issued by the Court after the recent trial of this matter.

9. Pursuant to FRCP RULE 60, the Defendants respectfully request the Court to relieve both Defendants from the Judgment/Order. Specifically, the Defendants should both be relieved from the Judgment/Order pursuant to FRCP RULE 60(b)(3), due to a Fraud being perpetrated on the Court; pursuant to FRCP RULE 60(b)(4), due to the Judgment/Order being Void; and pursuant to FRCP RULE 60(b)(6), due to the Judgment/Order lacking any reason.

10. Pursuant to FRCP RULE 62, the Defendants respectfully request the Court to stay the enforcement of any judgment against the defendants, including but not limited to judgments resulting from the recent trial or the corporate defendant's default.

11. The Defendants respectfully request the Court grant such other and further relief as this Court deems just and proper.

WHEREFORE, The Defendants do respectfully request that all relief requested in their motion herein is granted, including but not limited to, all relief requested pursuant to **U.S. CONST. AMEND. VII, FRCP RULES 38, 39, 52, 59, 60 and 62**, along with such other relief as this Court deems just and proper.

Dated: Island Park, New York
June 10, 2025

Glenn J. Ingoglia

GLENN J. INGOGLIA (GI 1655)